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No. 85-1866

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

CSEA LOCAL UNION 1000,
AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, AFL-CIO,
Petitioner,

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR,
Respondent,

and

HELEN CARTER,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT HELEN CARTER

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QUESTIONS PRESENTED

Whether a district court has the discretion to award attorney's fees to an intervenor-plaintiff who materially aids the Secretary of Labor in the successful prosecution of a lawsuit under Title IV of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 481 et seq.

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OPINIONS BELOW

The opinion of the court of appeals, dated February 14, 1986 (Pet. App. A1-A12), is reported at 784 F.2d 98. The decision of the district court, rendered July 26, 1985 (Pet. App. A13-A16), is unreported. The opinion of the court of appeals, dated May 1, 1985 (Pet. App. A36-A48), is reported at 761 F.2d 870. The decision of the district court, dated July 19, 1984 (Pet. App. A17-A35), is reported at 594 F.Supp. 188.

JURISDICTION

The judgment of the court of appeals was entered on March 11, 1986. The petition was filed on May 12, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

This action was brought by the

Secretary of Labor (Secretary) on January 31, 1983, under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481 et. seq., challenging the June 15, 1982 election of officers of petitioner, CSEA Local Union 1000. The Secretary sought an order declaring that petitioner had violated section 401(b) of the LMRDA, 29 U.S.C. § 481(b), by failing to conduct the election for the statewide offices of President, Executive Vice President, Secretary and Treasurer by secret ballot. The Secretary also sought an order declaring that petitioner had violated section 401(e) of the LMRDA, 29 U.S.C. § 481(e), by: (1) imposing unreasonable candidacy requirements; (2) imposing candidacy requirements in a non-uniform manner; (3) denying members in good standing a reasonable

opportunity for the nomination of candidates; and (4) denying members in good standing the right to be a candidate.

To remedy these violations, the Secretary sought a new election to be conducted under his supervision. Carter, the union member who had filed the initial election complaint with the Secretary, intervened in the lawsuit.

The Secretary filed motions for partial summary judgment on the secret ballot issue and on the claim that petitioner's nominating procedures were unreasonable. Petitioner filed a motion for partial summary judgment on the ground that Carter had not properly exhausted internal union remedies with respect to her complaint about the nominating procedures.

The district court granted the Secretary's motion for summary judgment

on the secret ballot issue; denied the Secretary's motion for summary judgment with respect to the nominating procedures; and denied petitioner's motion regarding Carter's exhaustion of remedies. The court ordered petitioner to conduct a new election within 90 days, supervised by the Secretary. (Pet. App. A27) A new election was held on October 15, 1984.

On appeal, the court of appeals reversed the district court insofar as it found petitioner's nominating procedures reasonable and not in violation of the LMRDA and affirmed the order insofar as it concluded that Carter had exhausted her internal union remedies. (Pet. App. A48). The secret ballot issue was not appealed.

Carter applied for costs and attorney's fees in the amount of $38,785.86 for the work contributed by

her counsel throughout the litigation. The district court awarded costs and fees to Carter in the amount of $7,112.10. (Pet. App. A16). The court of appeals affirmed but modified the award to include compensation for the time spent on the fee application itself. (Pet. App. A12).

STATEMENT OF FACTS

From May 15, 1982 to June 15, 1982, petitioner conducted a mail ballot election of statewide officers. Carter's request to be a candidate for the office of Secretary was denied by petitioner, ostensibly because she had not met the eligibility requirement of continuous good standing since June 1st of the previous year.

After an unsuccessful attempt to appeal the decision within the union, Carter filed suit in United States District Court for the Eastern District

of New York, seeking to enjoin petitioner from conducting the election without placing her name on the ballot. Jurisdiction was invoked pursuant to section 102 of the LMRDA, 29 U.S.C. § 412 and section 301(a) of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185(a).

Petitioner vigorously contested the issue of jurisdiction, contending that it was a public employee labor organization which was not covered by the LMRDA or LMRA. Investigation by Carter's counsel revealed that petitioner represented a small number of private sector employees in various parts of New York State. In April 1982, a four day evidentiary hearing was held on Carter's motion for a preliminary injunction. On May 13, 1982, the district court rendered a decision denying Carter's motion on the

merits, but finding that petitioner was subject to the federal labor laws.

After the election was conducted, Carter filed an election protest in accordance with the union constitution. Carter protested, inter alia, the lack of a secret ballot, the denial of her eligibility to be a candidate, and petitioner's unreasonable and undemocratic method of nominating candidates, to wit: incumbent officals were automatically nominated; a statewide nominating committee would choose other candidates whom it decided were "qualified"; and those persons not chosen would have to submit petitions containing the signatures of 2% of the membership.

When Carter's election protest was denied by petitioner, she submitted an election complaint to the Secretary, pursuant to Section 402(a)(1) of the

LMRDA, 29 U.S.C. §482(a)(1). During the Secretary's investigation, Carter's counsel provided further information and had frequent contact with Department of Labor personnel in an effort to persuade the Secretary to bring suit to overturn the election.

In addition to the evidence supporting her complaint, Carter supplied documentation to the Secretary to show that petitioner should be covered by the LMRDA. This consisted, in large part, of information obtained in the litigation of Carter v. CSEA, Civ. No. 82-0832, in the Eastern District of New York.

After a five month investigation, the Secretary concluded that he had jurisdiction under the LMRDA and he filed suit against petitioner. Carter intervened.

An active participant in the

litigation, Carter's counsel discussed legal strategy with counsel for the Secretary, prepared papers in opposition to petitioner's motion at the request of the Secretary's counsel, presented argument on each of the motions before the district court, and provided documents and other factual information to the Secretary's counsel during the course of the litigation. On the appeal, Carter again intervened, filed a brief, and argued before the court.

In her application for fees, Carter sought compensation for the work performed by her counsel in the Title IV lawsuit and in establishing that petitioner was governed by the LMRDA in the Carter v. CSEA litigation.

The Secretary declined to take a position with respect to the question of whether fees should be awarded, but,

in a statement submitted to the court, acknowledged the assistance of Carter in a number of areas, including the jurisdictional question, the issue of Carter's exhaustion of remedies, and the first appeal of the district court's order.

The district court determined that an award of attorneys fees was appropriate, but substantially reduced the amount requested. The court (1) awarded fees at the rate of $75 per hour rather than $100 per hour, which was requested by Carter; (2) declined to award fees for any work performed by Carter's counsel in the Carter v. CSEA litigation; (3) declined to award fees for any work performed on the appeal; (4) declined to award fees for any work performed on the fee application; and (5) reduced by one half the hours expended by counsel on the remaining

part of the case.

The district court awarded costs and fees in the amount of $7,112.10. The court of appeals affirmed the award of fees, but increased the amount to $8,649.60 to include compensation for the time spent by counsel on the fee application.

ARGUMENT

Petitioner contends that a district court has no authority under the LMRDA to award attorney's fees to an intervenor-plaintiff, such as respondent, who has provided material assistance to the Secretary in the successful prosecution of a Title IV suit. This contention was correctly rejected by the courts below. Further review is unwarranted.

1. Petitioner's contention that the statutory scheme of Title IV precludes an award of attorney's fees

misconstrues the purpose of the statute. Section 402 of the LMRDA "sets up an exclusive method for protecting Title IV rights, by permitting an individual member to file a complaint with the Secretary of Labor challenging the validity of any election because of violations of Title IV." Calhoun v. Harvey, 379 U.S. 134, 140 (1964). After filing an election complaint, the complaining union member must await the decision of the Secretary as to whether or not a lawsuit will be filed. This rule is designed to protect unions from frivolous litigation by individual union members and to avoid multiple suits by allowing the Secretary to consolidate all meritorious complaints concerning a union election in a single proceeding. Trbovich v. United Mine Workers of America, 404 U.S. 528, 532 (1972).

After the Secretary files suit, however, the complaining union member may intervene "so long as that intervention is limited to the claims of illegality presently by the Secretary's complaint." Trbovich, 404 U.S. at 537. As the Trbovich Court recognized, "there is no evidence that Congress was opposed to participation by union members in the litigation, so long as that participation did not interfere with the screening and centralizing functions of the Secretary." Trbovich, 404 U.S. at 532-33.

Since Trbovich, the courts have recognized that the intervenor union member is often in a position to provide critical assistance to the Secretary. In Brennan v. United Steelworkers of America, 554 F.2d 586, 595 (3rd Cir. 1977), cert. denied, 435

U.S. 977 (1978), the court observed:

> "The notion of private participation in the prosecution of Title IV violations, notwithstanding the involvement of the Department of Labor, is fully consistent with the form and purpose of this statute. Not only is the intervenor often in a position to obtain information which might, for whatever reason, be difficult for the agency to marshall or preserve, but his perspective and the intensity of his interest allow him to contribute to the court's total understanding."

Moreover, Congress itself created a significant role for the individual union member in Title IV's enforcement scheme. The first step in Title IV enforcement is for a union member to challenge the election through internal union procedures. The Secretary may seek to overturn an election only on grounds raised in "some discernible fashion" by the union member's protest

to the union. Hodgson v. Local 6799, United Steelworkers, 403 U.S. 333, 340-41 (1971). The Secretary's authority to sue, and any benefits that ultimately accrue to the membership, derive from the initial efforts of the individual complainant. The intervenor confers a substantial benefit on the union membership by identifying, investigating and presenting for the Secretary's ultimate prosecution, evidence of the union's violations of Title IV.

In these circumstances, it is unlikely that Congress intended to preclude courts from exercising their traditional power to grant attorney's fees in appropriate circumstances. In Hall v. Cole, 412 U.S. 1 (1973), the Court upheld a "common benefit" award of attorney's fees to a union member in his successful Title I action despite

the fact that Title I provides only for "such relief (including injunctions) as may be appropriate," and does not, like Titles II and V, explicitly mention attorney's fees as a form of available relief.

Justice Brennan explained that an individual, by vindicating his own right, "necessarily rendered a substantial service to his union as an institution and to all of its members." Hall, 412 U.S. at 8.

This Court has been unwilling to infer Congressional intent to preclude awards of attorney's fees unless the statutory remedies have been "'meticulously detailed'", Hall, supra, 412 U.S. at 9, or there has been a "'definitive and absolute setting of the Congressional face against the giving of such incidental relief by the courts where compatible with sound and

established equitable principles,'" Hall, 404 U.S. at 12. See also Mills v. Electric Auto-Lite Co., 396 U.S. 375 (1970).

It cannot be said that Title IV represents this type of comprehensive scheme, particularly since Congress created such a significant role for the individual union member in its enforcement. "[L]egislatures do not ordinarily create roles -- strong roles -- and then deny their existence by refusing to recognize the existence of the means to fulfill them effectively." Brennan, supra, 554 F.2d at 599.

2. Petitioner contends, in accord with Justice White's dissent from the denial of certiorari in United Steelworkers of America v. Sadlowski, 435 U.S. 977 (1978), that the availability of attorney's fees for intervenors will result in an additional costly burden upon the union

and would involve burdensome multiple litigation. In fact, the additional burden to the union in responding to an application for fees is minimal, since the court and the parties are fully familiar with the contribution, if any, made by intervenor's counsel.

In the instant case, the court awarded less than 25% of the amount of fees requested by the intervenor. Fees were awarded only for the specific contributions which were acknowledged by the Secretary to be important and determined by the court not to be duplicative of the Secretary's work.[1] (Pet. App. A15).

In each of the reported cases, it is evident that the courts have

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[1] Unlike United Steelworkers of America v. Sadlowski, supra, in the instant case, the Secretary did not oppose an award of attorney's fees and acknowledged certain areas in which the intervenor provided material assistance.

carefully tailored the amount of fees awarded to correspond to the specific contributions made by the intervenor.[2] Thus, in Marshall v. United Steelworkers of America, 666 F.2d 845 (3d Cir. 1981), attorney's fees were granted only for work performed by intervenor's counsel during the period between the date of the election and the date the member's complaint was

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[2] The four circuits which have addressed the question have all held that attorney's fees may be awarded to an intervenor who has materially aided the Secretary in the successful prosecution of a Title IV suit. See Rollison v. Hotel, Motel, Restaurant and Construction Camp Employees, 677 F.2d 741 (9th Cir. 1982); Donovan v. International Brotherhood of Teamsters, Local 70, 661 F.2d 1199 (9th Cir. 1981); Brennan v. United Steelworkers of America, 554 F.2d 586 (3d Cir. 1977), cert. denied, 435 U.S. 977 (1978); Marshall v. United Steelworkers of America, 666 F.2d 845 (3d Cir. 1981) (appeal of denial of fees on remand in Brennan); Usery v. Local Union 639, International Brotherhood of Teamsters, 543 F.2d 369 (D.C. Cir. 1976), cert. denied, 429 U.S. 1123 (1977).

filed with the Secretary. The court determined that the work done by intervenor's counsel after that point was duplicative. In Rollison v. Hotel, Motel, Restaurant and Construction Camp Employees, 677 F.2d 741 (9th Cir. 1982), the court found that the intervenor's contribution yielded a substantial benefit to the membership exceeding that derived from the Secretary's efforts. And, in Donovan v. International Brotherhood of Teamsters, Local 70, 661 F.2d 1199 (9th Cir. 1981), the court of appeals noted that "[t]he modest amount awarded [by the trial court] strongly suggests it does not exceed the value of the intervenor's contribution." 661 F.2d at 1203.

In Usery v. Local Union 639, International Brotherhood of Teamsters, 543 F.2d 369 (D.C. Cir. 1976), cert. denied, 429 U.S. 1123 (1977), no fee

award had yet been made when the court of appeals reviewed the case, but the court instructed the district court to determine, with the aid of the views of the Secretary, whether an award was warranted and if so in what amount. As the court of appeals in the instant case noted, "[t]he determination as to the extent to which the intervenor has provided a 'common benefit' is best made by the district court." (Pet. App. A8).

The reported cases do not reflect the excessive fee awards or burdensome multiple litigation feared by petitioner. Rather, the district courts have demonstrated a determination to award fees only for contributions by intervenors which are material and non-duplicative.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: June 11, 1986

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